

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures--Hearings**

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### **Article 2. Administrative Hearing Procedures for Petitions for Review of Executive Officer Decisions**

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### **Subarticle 5. Prehearing Procedures**

#### **§ 60055.20. Scheduling of Hearings.**

(a) Within 30 days after receipt of the executive officer's response, the hearing office shall schedule the hearing on the merits of the petition. Except as provided in paragraph (f), below, a hearing on the merits of a petition for review shall, in general, be scheduled to be heard no later than 180 days from the date of the hearing officer's determination under section 60055.17 that a hearing on the petition for review is appropriate. The hearing officer may determine, for good cause and in the interest of justice, that a later hearing date is necessary.

(b) The hearing office shall deliver or mail a notice of hearing to all parties at least 30 days prior to the hearing. The notice shall be in the form specified in section 11509 of the Government Code, and shall also provide notice of the availability of interpreters pursuant to section 60055.10 of these rules.

(c) The hearing officer shall grant such delays or continuances as may be necessary or desirable in the interest of fairly resolving the case.

(1) The hearing officer may, on his or her own motion or upon request of any party accompanied by a showing of good cause, continue a hearing to another time or place.

(2) A party shall apply to the hearing officer for a continuance not less than five days prior to the scheduled hearing.

(3) When a continuance is ordered during a hearing, the hearing officer shall give written notice of the time and place of the continued hearing.

(d) The hearing office shall set the place of hearing at a location as near as practicable to the place where the petitioner resides or maintains a place of business in California. If the owner does not reside or maintain a place of business in California, the hearing shall be in Sacramento. The hearing office may establish hearing locations anywhere in the state; at a minimum one hearing location shall be established in Sacramento and one in the Los Angeles area.

(e) Upon the motion of any party and a showing of good cause, or upon the motion of the hearing officer, and in the absence of an objection from any party, the hearing officer may exercise discretion to conduct all or part of a hearing by telephone.

(1) In granting such a motion, the hearing officer must be assured that each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe all exhibits fully.

(2) The hearing officer may direct the party who has requested the alternative method to make the necessary arrangements and be responsible for any associated costs.

(f)(1) If a hearing has been granted under section 60055.17 in a proceeding requesting review of an executive officer decision denying certification to motor vehicle engine families pursuant to Chapter 2, Part 5, Division 26 of the Health and Safety Code, a motor vehicle manufacturer may file a petition requesting that the hearing schedule be expedited. Such petitions shall be filed concurrently with the petition for review of the action and shall be accompanied by affidavits and other evidence setting forth the reasons why expedited scheduling is warranted. A hearing officer shall be assigned to consider the petition for expedited scheduling and shall issue a determination on the petition within five business days of receipt of the petition. The hearing officer shall grant the petition for expedited scheduling upon the manufacturer presenting evidence showing a reasonable likelihood that it may suffer serious competitive harm if the petition is not granted.

(2) If the petition for expedited scheduling is granted:

(a) The hearing office shall give priority to the scheduling of the hearing on the merits and shall make every effort to schedule the first day of hearing no later than ten days after the granting of the petition.

(b) The hearing officer shall issue a recommended decision that the Board may accept, reject, or modify as necessary.

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(3) Notwithstanding section 60055.25, and subject to the discretion of the hearing officer, the parties shall have limited rights to discovery in a matter scheduled for expedited hearing. The parties shall exchange lists of witnesses that are expected to testify and copies of exhibits that are expected to be introduced at hearing no later than 48 hours prior to the commencement of the hearing. The hearing officer may disallow the testimony of witness or the introduction of any evidence that is not timely provided to the opposing party.

(4) Unless expressly provided by the hearing officer, the parties shall not have the opportunity to present closing written arguments.

(5) The hearing officer shall attempt to issue his or her decision as expeditiously as possible, but not later than ten days after the close of hearing.

(6) Upon issuance of the proposed decision of the hearing officer, the decision shall be delivered to the board for review, with copies served on the parties. Consistent with the requirements of Government Code section 11125, the state board shall consider the recommended decision at its next scheduled meeting. The state board may accept, reject, or modify the hearing officer's proposed decision. If the state board rejects or makes substantive modifications to the proposed decision, it shall issue a written decision, with findings of fact and conclusions of law in support of its decision.

(7) The decision of the state board is not subject to reconsideration under section 60055.41.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Section 43105, Health and Safety Code; and Sections 11509 and 11440.30, Government Code.

#### **REFERENCE**